



DEPARTMENT OF STATE

Office of the Secretary

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DOS; Office of the Secretary, DHS.

ACTION: Notice of determination.

Following consultations with the Attorney General, the Secretary of State and the Secretary of Homeland Security have determined that the grounds of inadmissibility at section 212(a)(3)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(3)(B), bar certain individuals who do not pose a national security or public safety risk from admission to the United States and from obtaining immigration benefits or other status. Accordingly, consistent with prior exercises of the exemption authority, the Secretary of State and the Secretary of Homeland Security hereby conclude, as a matter of discretion in accordance with the authority granted by section 212(d)(3)(B)(i) of the INA, 8 U.S.C. 1182(d)(3)(B)(i), as amended, after considering the foreign policy and national security interests deemed relevant in these consultations, that section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), excluding subclause (i)(II), shall not apply with respect to an individual who was employed as a civil servant in Afghanistan at any time from September 27, 1996 to December 22, 2001, or from August 15, 2021, or thereafter, if the individual establishes that they did not voluntarily and knowingly engage in terrorist activity on behalf of the Taliban or another designated terrorist organization, and provided that the individual satisfies the relevant agency authority that the individual:

(a) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed all relevant background and security checks;

(c) Has fully disclosed, to the best of their knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of any activities or associations falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) Has not participated in, or provided material support for the commission of, a terrorist activity that they knew or reasonably should have known targeted noncombatant persons or U.S. interests;

(e) Is not otherwise inadmissible under section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), for which no exemption applies;

(f) Poses no danger to the safety and security of the United States; and

(g) Warrants an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority supersedes a similar exercise of authority by then Secretary of Homeland Security Jeh Johnson and then Secretary of State John Kerry signed on January 18, 2017, expanding the covered time period of employment as a civil servant in Afghanistan to include the period from “August 15, 2021, or thereafter,” in addition to the period from September 27, 1996 to December 22, 2001. This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the individuals to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of State or by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Dated: June 8, 2022.

Alejandro N. Mayorkas,
Secretary,
U.S. Department of Homeland Security.

Dated: June 8, 2022.

Antony J. Blinken,
Secretary,
U.S. Department of State.